

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

DYLAN THOMAS HAYES,
Plaintiff,

v.

Case No. 21-C-719

CHRISTINE BURNETT,
Defendant.

ORDER

On November 10, 2021, the defendant moved for summary judgment on the ground that the plaintiff failed to exhaust his administrative remedies before bringing this lawsuit. ECF No. 16. I ordered the defendant to amend the motion to include copies of the relevant federal and local rules and ordered the plaintiff to respond to the defendant's amended motion by December 20, 2021. Text Only Order of Nov. 12, 2021. The defendant filed her amended motion the same day. ECF No. 20. At the December 20, 2021 deadline, the plaintiff requested additional time to respond to the defendant's motion, which I granted. ECF No. 21; Text Only Order of Jan. 5, 2022. The plaintiff filed his response materials on February 3, 2022. ECF Nos. 22–24.

In lieu of filing a reply brief, the defendant moved to withdraw her motion for summary judgment on exhaustion grounds. ECF No. 25. She asserts that, after reviewing the plaintiff's response materials "and following up on the information presented," she believes "there may be a factual issue precluding summary judgment on exhaustion grounds." *Id.* at 1.

After reviewing the filings by both parties, see Fed. R. Civ. P. 56(e)(2), I find there is a factual issue whether the plaintiff timely appealed the dismissal of his institutional

complaint relevant to this lawsuit. That factual issue precludes summary judgment on exhaustion grounds. Ordinarily, a factual dispute on an issue of exhaustion necessitates a hearing under *Pavey v. Conley*, 544 F.3d 739, 742 (7th Cir. 2008). Because the defendant agrees there is a factual dispute prohibiting summary judgment, however, I need not conduct the hearing.

IT IS THEREFORE ORDERED that the defendant's motion and amended motion for summary judgment on exhaustion grounds (ECF Nos. 16 & 20) are **DENIED**.

IT IS FURTHER ORDERED that the defendant's motion to withdraw her motion for summary judgment (ECF No. 25) is **DENIED** as moot.

The court will separately enter a scheduling order setting deadlines for discovery and dispositive motions on the merits.

Dated at Milwaukee, Wisconsin this 3rd day of March, 2022.

s/Lynn Adelman
LYNN ADELMAN
United States District Judge